IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

HARVEST BANK OF MARYLAND,	)	Case Number:
Plaintiff,	)	8:09-CV-00176-RWT
vs.	)	
COUNTRYWIDE HOME LOANS, INC.,	)	
Defendant.	)	

Volume 1

DEPOSITION OF
TERRY R. MENDENHALL
Baltimore, Maryland
Thursday, August 19, 2010
10:06 a.m.

Job No.: 1-184363
Pages 1 through 247
Reported by: John L. Harmonson, RPR

EXHIBIT 3

Deposition of

TERRY R. MENDENHALL

Held at the offices of:

BALLARD SPAHR, LLP
300 East Lombard Street
18th Floor
Baltimore, Maryland 21202

Taken pursuant to the Federal Rules of Civil Procedure, by notice, before John L. Harmonson, Registered Professional Reporter, Notary Public in and for the State of Maryland, who officiated in administering the oath to the witness.

APPEARANCES

ON BEHALF OF PLAINTIFF:

MICHAEL R. CARITHERS, JR., ESQUIRE
DAVID P. PARKER, ESQUIRE
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ON BEHALF OF DEFENDANT:

ROBERT A. SCOTT, ESQUIRE
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300 East Lombard Street
18th Floor
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(410) 528-5600

ALSO PRESENT:

ALAN J. BLOCHER
MIDDLETON THOMPSON (Via telephone)

same one that issued the graduate key, the second bullet from the bottom.

Q. And were these similar courses that you took during the summer or something different?

A. No, they were during the year. People would sign up and take these courses at night at one of the local institutions. There might be 15 or 20 people in the class and a textbook and teacher who was from the business.

Q. And how many hours were these courses?

A. I don't know that they -- I guess they did give credit hours. I can't remember.

Q. Other than those courses, have you taken any formal courses in residential mortgage loan underwriting?

A. No.

Q. How about residential mortgage loan servicing?

A. No.

Q. Do you hold any professional licenses?

A. No.

Q. Have you ever held any professional

licenses?

A. No.

Q. Do you have any experience appraising residential real estate?

A. As an underwriter of residential real estate appraisals, yes.

Q. What do you mean by an underwriter of residential real estate appraisals?

A. There is a process in underwriting where you look at the appraisal and you underwrite and accept or reject that appraisal.

Q. And what's involved in that process?

A. Reading the appraisal.

Q. What else?

A. Making judgments about it.

Q. Do you look at any other information other than the appraisal?

A. Maybe. Sometimes you do.

Q. Like what?

A. Information about the marketplace.

Q. What kind of information?

A. Home sales, home starts.

Q. Have you ever had any training in the appraisal of residential real estate?
A. How do you define "training"?
Q. You don't understand the term "training"?
A. Well, I do. Yes, I've had training in residential real estate appraisal.
Q. Okay. When and where?
A. From the time I started in the business in 1970.
Q. What kind of training did you have?
A. A supervisor one-on-one teaching me what I needed to know.
Q. When you say teaching you what you needed to know, are you talking about with respect to the underwriting of appraisals or actual appraisals?
A. Both.
Q. Have you ever issued -- Well, you're not a licensed appraiser?
A. No.
Q. And you never have been?
A. No.
Q. Have you ever taken any courses or formal

seminars on the appraisal of residential real estate?
A. I can't remember. I may have. I can't recall. It could have been another one of those Institute of Financial Education courses, but I just don't recall.
Q. So going back to what you said about the training that you received in underwriting residential appraisals, you said that began in the 1970s?
A. That's correct.
Q. All right. And you said a supervisor teaching you what you needed to know. What did the supervisors teach you about that subject matter?
A. Everything that he thought was important in his experience of reviewing and underwriting appraisals.
Q. And do you recall what those things were?
A. Well, the very basics of it is that there are three approaches to value, income approach, market approach and cost approach, and where that information comes from and how it's calculated and what kinds of assumptions can be made by the appraiser, and what underwriters need to look for as they make judgments

about that appraisal.

Q. And what do underwriters need to look for as they make judgments about an appraisal?

A. What those assumptions are and whether they agree with them or not.

Q. Whether the underwriter agrees with the assumptions?

A. Right, the assumptions of the appraiser. I can give you an example if you would like an example.

Q. Okay.

A. And we can fast-forward. This case in Denver, I talked about one of the aspects of the appraisal process is that these were all income properties, commercial real estate income properties. One of the underwriting flaws, in my opinion, is that they only made market value approaches to the value.

That's one of the no-nos. If you're appraising income property, you need an income approach to value. Had they had that, I'm not sure they would have appraised at the amount they appraised for.

Q. Are there established standards for the

appraisal of residential real estate?

A. Yes. There's different institutes and certifications that appraisers get.

Q. Do you know what they are?

A. MAI is one, Master Appraisal Institute, I believe it stands for.

SRPA is another, Senior Residential -- I don't know what the -- SRPA, I don't know what the P stands for.

And then there's an SRA. That's Senior Residential Appraisal.

Q. And these organizations that give out these designations have established standards for how to appraise residential real estate?

A. They do.

Q. And those are accepted in the industry?

A. They're accepted in the industry. But lenders continue to make judgments about their opinions.

Q. Are you familiar with the standards that are used to appraise residential real estate?

A. Not at this moment.

Q. So your experience with evaluating appraisals of residential real estate is as part of the residential loan mortgage underwriting process?

A. That's correct.

Q. And as part of that process, you would review appraisals and determine whether you agree with them or not; is that right?

A. That's correct. And decide which appraisers to use.

Q. As part of that process, would you ever assign a value, an alternate value, if you disagreed with an appraisal?

A. On occasion, yes.

Q. And what would you base that on?

A. On my judgment and my experience.

Q. But not applying the established standards of residential real estate appraisal?

A. I might or might not. It depends on what the facts are.

Q. All right. Because I thought you just testified that you weren't familiar with what the standards are?

A. I said not currently. I don't know currently today what those standards are. Currently this minute, I'm not presented with an appraisal where I can see what issues I might need to cover.

Q. Were you familiar with the standards that were in effect in 2006?

A. Generally.

Q. In Maryland?

A. I've done some research on Maryland real estate values.

Q. Okay. My question is: Are you familiar with what the established standards were for the appraisal of residential real estate in Maryland in 2006?

MR. CARITHERS: Objection to the question.

THE WITNESS: Repeat that question again.

MR. SCOTT: Could you read it back, please.

(Whereupon, the requested portion was read back by the Reporter.)

THE WITNESS: No.

BY MR. SCOTT:

Q. Are you familiar with what the established

standards are for the appraisal of residential real estate in Maryland in 2010?

MR. CARITHERS: Same objection.

THE WITNESS: No.

BY MR. SCOTT:

Q. What was your first job after you graduated from Florida State?

A. This job right here on the bottom of the résumé, page 2.

Q. Western Federal Savings?

A. Correct.

Q. You were a loan officer and assistant manager?

A. Right.

Q. What were your duties?

A. Well, as assistant manager, I had responsibilities initially on the deposit side of the business, teller supervision, new accounts, as well as the loan officer responsibilities for lending, which became the full-time job over time.

Q. I'm sorry, what became the full-time job over time?

A. The loan officer.
Q. What did you do as a loan officer?
A. Took loan applications.
Q. For all types of loans?
A. Residential mortgage loans.
Q. Just residential?
A. Right.
Q. And you say you took the applications?
A. Took the applications, processed the application, prepared an underwriting package for an underwriter to approve or reject the loan, scheduled the closing, coordinated the closing, coordinated the funding of the loan.
Q. So the underwriting decision would be made by somebody else?
A. Correct.
Q. And was that consistent throughout your employment at Western Federal Savings?
A. That's correct.
Q. That you did not make underwriting decisions?
A. That's correct.

Q. And then you left Western Federal Savings in 1972; is that correct?

A. That's correct.

Q. And you went to Fidelity Federal Savings?

A. That's correct.

Q. Why did you make that change?

A. My wife and I were both from Florida originally. We had an opportunity with this particular company to go back. I was recruited by the new CEO of that company, and so we went to Jacksonville, Florida.

Q. And what was your job at Fidelity?

A. My job initially was as a branch manager.

Q. And that changed over time?

A. That changed over time. I eventually became the senior vice president of branch operations, I think it was called.

Q. And what were your duties?

A. They involved both deposit duties as well as lending duties.

Q. What were your lending duties?

A. Residential mortgage lending.

Q. Did you do any underwriting?
A. Yes.
Q. When did you start doing that?
A. I can't recall.
Q. But it was when you were at Fidelity?
A. Yes. Eventually, I became the senior vice president and chief lending officer.
Q. When did that happen?
A. I'm going to guess here. I would guess about 1976. It's about the middle of the time I was there.
Q. And at some point during your employment with Fidelity you began performing the underwriting tasks?
A. As senior vice president and chief lending officer, I was responsible for the quality of all loans. I underwrote every loan that originated that was a residential mortgage loan.
Q. And you left Fidelity in 1981?
A. That's correct.
Q. To go to Gibraltar Savings?
A. That's correct.

Q. And why did you make that change?
A. I was recruited.
Q. And what were your duties at Gibraltar?
A. Secondary marketing.
Q. What does that mean?
A. That's the purchase and sale of whole loans or participations.
Q. What do you mean by "participations"?
A. Participations in whole loans. Someone can buy or sell at 90 percent, 10 percent, 50 percent. That was a participation in the loan. So if the whole loan balance is $100,000, 50 percent participation is a 50 percent interest or $50,000.
They were sold in packages usually. There were whole loan sales as well as participation sales.
Q. And these loans were sold by Gibraltar to various investors?
A. They were purchased by Gibraltar, too.
Q. So Gibraltar both sold whole loans and also purchased whole loans?
A. And sold participations and purchased participations.

Q. And your responsibility was to oversee that?

A. Oversee that, yes.

Q. All right. And these were residential mortgage loans?

A. Yes.

Q. And where were the properties located? Was there any particular area or was it nationwide?

A. Texas.

Q. Exclusively?

A. Let me think. There were some packages that were purchased that were outside of Texas. There were some that I sold outside of Texas.

Q. What would your involvement be in a typical loan purchase transaction for Gibraltar? What would you do? What tasks would you perform?

A. Negotiate the purchase with the seller. Usually initiated a commitment letter and either a participation agreement or a whole loan purchase and sale agreement. Coordinated that with lawyers, corporate lawyers and the other party.

Q. Anything else?

A. Screening loans for sale or reviewing loans that had been purchased to see if we wanted to purchase them. Going through a quality control process on loans that were sold, going through a due diligence process for loans that were purchased.

Q. You would be involved in that?

A. Right.

Q. Would you be the one actually reviewing the loan files?

A. I was supervising a group of people who were reviewing loan files, bringing me problems and making decisions and judgments about those, including underwriters, including closers and funders.

Q. And you said you were involved with the due diligence of loans that Gibraltar was purchasing.

A. That's correct.

Q. All right. In a whole loan transaction, how does that due diligence process typically work?

A. It depends on the standards of the institution.

Q. The purchasing or the selling institution?

A. Both.

Q. Well, what kind of standards for due diligence review of purchased loans did Gibraltar have when you were working there?

A. The loan packages were requested or came into our operation. We had underwriters that looked at them and made decisions about those loans. We may or may not require a visit to the property to see what we thought or didn't think about the property. And it depended and was guided by the investment policy of the organization.

Q. The purchasing organization?

A. The purchasing organization.

Q. Which would be Gibraltar bank in this instance?

A. Right.

Q. So they would have underwriters review the loan files for the loans that they were considering purchasing?

A. That's correct.

Q. All right. And why is that an important thing to do?

A. To establish the quality of the loans that

are there.

Q. And you would agree, wouldn't you, that it's prudent for an institution that's purchasing a residential mortgage loan to review the loan file?

A. Yes.

MR. CARITHERS: Objection to the question. You can answer.

BY MR. SCOTT:

Q. I'm sorry, I didn't get your answer.

A. Yes.

Q. And what kinds of things should the purchasing institution look for in the loan file?

A. It depends on what they look for in other loans that they make on their own and what their investment policy is.

Q. All right. Well, when you worked at Gibraltar, what kind of things were the underwriters looking for in the files of loans that Gibraltar was considering purchasing?

A. We would look at it just like any other loan that we would make. Look at the application, look at the credit report, look at the appraisal,

recalculate debt to income ratios.
Q. Did you look for income verification in the file?
A. Yes, we did.
Q. Asset verification?
A. Correct.
Q. So at the time that you were doing this, Gibraltar was also making residential mortgage loans on its own; is that correct?
A. Correct.
Q. Yes?
A. Correct.
Q. So it would apply those same standards that it used to underwrite or originate loans on its own to the loans that it purchased?
A. That's correct. And I would add, those were the standards at the time.
Q. What were the standards?
A. All of those components of underwriting.
Q. When you say --
A. Verification of income, verification of assets, reviewing the credit report, reviewing

appraisals.

Q. When you say those were the standards at the time, you mean generally, or the standards of Gibraltar at the time?

A. Generally.

Q. Has that changed over time?

A. For some institutions.

Q. And how has it changed?

A. As evidenced by the loans in this case, Countrywide changed those standards in a fairly recent time period.

Q. We'll get into that in detail later. I was referring to the standards that were used by institutions that were purchasing mortgage loans when they would review them to determine whether they wanted to purchase them. Did those standards change over time?

A. What time are you talking about?

Q. Well, you made a statement that you were telling me about the standards that were in effect at the time you were doing due diligence review of loans for Gibraltar, which was the early 1980s.

A. The complaint. The funding reports. There were letters that were -- Let me see. Trade confirmation letters, the purchase and servicing agreement.

I asked was there a commitment letter written. I have always -- In 40 years, every time a purchase or sale transaction was performed, the seller first provides a commitment letter, which is the initial contract by which we're going to follow to then draw up agreements, fund the loans, those types of things. There was no commitment letter.

Q. But you did get the purchase and sale agreement?

A. I did. Purchase and servicing agreement, I think it's titled.

Q. I think you're right.

And what were you asked to do?

A. To review those and have a call and talk about them.

Q. Okay. And did you do that?

A. I did.

Q. All right. And who was the call with?

A. Mr. Parker.
Q. And what did you discuss?
A. We've had hundreds of calls. I can't tell you what we discussed in the very first call. But I can remember that I was concerned about the underwriting from the very start, and I wanted to resolve that issue. And we kept digging on that issue. I did.
Q. All right. So you told Mr. Parker right off the bat that you were concerned about the underwriting?
A. That I wanted to make that a part of my analysis.
Q. Why did you want to make it a part of your analysis?
A. Because these loans had serious default rates. My experience says there is an underwriting problem when that occurs, and especially when the default rates are far in excess of anything experienced in the industry at that point.
Q. Did you take any notes of this conversation you had with Mr. Parker?

A. I'm sure I did.
Q. Do you have them with you?
A. No. My process is I accumulate notes for a while and then at some point I throw them away and they become the next document in the chain or the next draft or whatever.
Q. Well, I'm talking about handwritten notes. Did you take --
A. From that conversation?
Q. Yes.
A. No. Yes, I took them. No, I don't have them.
Q. So you disposed of them?
A. Yes.
Q. When was that?
A. A year ago. Usually when I write the first report, I will use some notes, some recollection, things I've collected. Then I start cleaning out files and filing that. That's done.
Q. So you did generate notes regarding your conversations with Mr. Parker, but you disposed of them?

A. That's correct. That's my process.
Q. And you said about a year ago you got rid of those.
A. Well, the first version of the report was July the 20th. Somewhere around that, before or after, probably after, within 15 to 30 days, I started purging files. That's just what I do. I don't have all the room in the world.
Q. All right. So I take it there were handwritten notes of multiple conversations that you had with Mr. Parker?
A. Probably, yes.
Q. And you got rid of all of them?
A. Yes.
MR. CARITHERS: Wait a minute. There's some notes you've kept, more recent.
THE WITNESS: Yes, more recent. I mean, if you want to see notes, I've got notes.
MR. CARITHERS: To sort of clarify the record, I personally was not aware that he was disposing of notes. When we became aware of that, we instructed him to retain all his notes. That process

Q. Such as?

A. Documentation standards and underwriting standards.

Q. Are those terms used in the document?

A. No, they are not.

Q. So what definitions are missing?

A. What documentation standards will be used and what underwriting standards will be used.

Q. So you're saying that the agreement does not set forth what documentation and underwriting standards are going to be used?

A. Correct.

Q. All right. And do agreements of this kind, in your experience, typically have that information in them?

A. Yes, they do.

Q. I take it from your earlier testimony that you've never been involved in the purchase of any mortgage loans from Countrywide in the past. Is that right?

A. That's correct.

Q. Have you been involved in the purchase of

any loans from Wells Fargo?
A. No.
Q. Washington Mutual?
A. No.
Q. Chase?
A. No.
Q. Citibank?
A. No.
Q. Have you ever seen a whole loan mortgage purchase agreement from any of those entities?
A. No.
Q. What was your understanding of how Harvest Bank selected the loans that it purchased under this agreement?
A. They selected based on loan-to-value ratio and credit score.
Q. All right. Those are the criteria. My question may have been a little unclear.
Can you explain to me logistically how Harvest Bank selected the loans?
A. No, I can't.
Q. You don't know?

borrowers that are paying the payments for the debt that I'm borrowing.

Q. That you're purchasing?

A. That I'm purchasing, I'm sorry.

Q. Is it your opinion that stated income loans were not customary in the residential mortgage origination business in 2006?

A. I don't know what was customary.

Q. You don't know?

A. I know that there were stated income loans. I can't tell you that every lender was or wasn't making stated income loans. All I know is what Countrywide did and what this case provides, and what my historical experience is.

Q. Are you familiar with the underwriting policies and practices of Wells Fargo in 2006-2007?

A. No, I'm not.

Q. Are you familiar with the underwriting policies and practices of Chase in 2006-2007?

A. No, I'm not.

Q. Are you familiar with the underwriting policies and practices of Citibank in 2006-2007?

A. No, I'm not.
Q. Are you familiar with the underwriting policies and practices of Washington Mutual in 2006-2007?
A. No, I'm not.
Q. Are you familiar with the underwriting policies and practices of any residential mortgage lender in 2006?
A. Yes.
Q. Countrywide?
A. Countrywide. The credit union that I'm on the board of.
Q. Any others?
A. Some of the clients that I've worked for during that time period.
Q. Who would that be?
A. Security Service Federal Credit Union. First Community Bank of Corpus Christi. I'm trying to think. There's a bank in Temple, Texas. All of those, I've looked at their underwriting and origination practices.
Q. That were in effect in '06?

A. Yes. '05, '06, that time period.
Q. All right. The first one you mentioned was a federal credit union?
A. Security Service.
Q. Security Service.
A. Right.
Q. Where is that located?
A. San Antonio, Texas.
Q. And is that a credit union for people who work in the security industry?
A. No. It's an open-to-the-public credit union with offices in Texas and Colorado.
Q. Do you know how many residential mortgage loans they make per year?
A. I would have go back to records. They're one of the larger credit unions in the United States.
Q. Do they make stated income loans?
A. No.
Q. Did they make them in '06?
A. I don't know. I don't think so.
Q. First Community Bank of Corpus Christi, that's in Corpus Christi, Texas, I take it.

A. Right.
Q. How many branches do they have?
A. I think seven or eight.
Q. And do you know how many mortgage loans they make a year?
A. No. I don't have those off the top of my head, no.
Q. Do they loan exclusively in Texas?
A. Yes.
Q. And do they make stated income loans?
A. Not to my knowledge.
Q. And then you mentioned the credit union that you're on the board of, which is --
A. I mentioned there is a bank in Temple, Texas, that I can't recall the name of right now.
Q. How many branches do they have?
A. Oh, they had five or six branches.
Q. All in Texas?
A. All in Texas.
Q. Do you know how many mortgage loans they make per year?
A. I'm sorry, it's not Temple, Texas, it's

Cameron, Texas.

Q. Do you know how many mortgage loans they make per year?

A. No. Not off the top of my head, no.

Q. Do they make stated income loans?

A. No.

Q. And then the credit union that you're on the board of, you're familiar with their underwriting policies and practices as of 2006; is that correct?

A. That's correct.

Q. And how many branches does that credit union have?

A. Only one.

Q. And how many mortgage loans does it make per year, roughly?

A. Oh, a few hundred.

Q. And does it make stated income loans?

A. No.

Q. So I take it, then, that you don't know how Countrywide's underwriting policies and practices in 2006 differed from those of Washington Mutual?

A. No.

Q. Or of Chase?
A. No.
Q. Or of Wells Fargo?
A. No.
Q. Or of Citibank?
A. No.
Q. Is it your opinion that stated income loans are not legal?
A. I don't know if they're legal or not. I'm not an attorney. But to the extent that fraud has been created, that's a legal violation of law.
Q. Is it your opinion that stated income loans are not customary, or weren't customary in 2006?
A. No, that's not my opinion. No.
Q. They were customary?
A. I don't know whether they were or not.
Q. You don't know. Okay, fair enough.
And I'm asking specifically about 2006.
A. Right.
Q. And your answer is the same?
A. The answer is the same.
Q. Is it your opinion that stated income loans

And the fact that there was a second mortgage on the house and it was 100 percent financed?
A. Correct.
Q. And that's it?
A. That's it.
Q. With respect to Mangieri?
A. Correct.
Q. All right. Is it your opinion that 100 percent financing was not customary in the mortgage business in 2006?
A. 100 percent with second mortgage financing was not customary in the mortgage business.
Q. It was not?
A. It was not.
Q. And what's your basis for that statement?
A. Experience.
Q. How many loans did you underwrite or review in 2006?
A. Not many.
Q. You would agree that what's customary in the mortgage industry has evolved over time, wouldn't you? It's changed over time?

that property?

A. If it stays up, it does. You're making a mortgage for 30 years.

Q. But whatever the value of the property is at a particular point in time impacts the value of the mortgage loan that is secured by that property, correct?

A. Correct.

Q. So with respect to Mr. Mangieri, what was the sales price for his property?

A. Sales price was $490,000.

Q. And that was in August of '06, right?

A. Contract date is 7/14/06, closing date was 8/14/06.

Q. And if that value of that property had gone up and, say, in 2008 it was worth $550,000, then the value of that loan would be more, correct?

A. The loan to value of that loan would be less. The value of that loan, I don't know what it's going to be.

Q. Have you reviewed the underwriting on any of the loans in the portfolio that are not in default?

A. No.
Q. So you don't know whether you believe there are any problems with the underwriting on those loans?
A. I don't have any idea.
Q. Do you know why Mr. Mangieri defaulted on his mortgage?
A. No, I don't.
Q. Did the approval of Mr. Mangieri's loan comply with the underwriting guidelines of Countrywide at the time?
A. It depends on what part of the underwriting guidelines you read.
Q. Well, which parts did you look at?
A. Let's see. It probably complied with their low doc loan guidelines.
Q. Do you know who the originating lender was for the Mangieri loan?
A. It doesn't look like I collected that information. No.
Q. Okay. Do you know whether the Mangieri loan was underwritten to Countrywide's guidelines or whether it was underwritten to some other lender's

for.
BY MR. SCOTT:
Q. Well, did they know what to look for?
MR. CARITHERS: Objection.
THE WITNESS: I don't know.
BY MR. SCOTT:
Q. Do you have an opinion about whether or not the approval of this loan complied with Countrywide's underwriting guidelines?
A. No, I don't.
Q. Do you have an opinion about whether the underwriting of the Reyes loan complied with Countrywide's underwriting guidelines?
A. No, I don't.
Q. Do you have an opinion about whether the underwriting of any of the loans at issue in the case complied with Countrywide's underwriting guidelines?
A. No, I don't.
Q. Okonkwo, O-k-o-n-k-w-o.
A. Okonkwo, I think it is.
Q. Columbia, Maryland. What, if anything, about the underwriting of this loan, in your opinion,

debt-to-income ratio?
A. Correct.
Q. And that was apparent from a review of the file?
A. Correct.
Q. And again, you don't know what caused this borrower to default on this loan?
A. No.
Q. The next one is the Kang loan, K-a-n-g, Ellicott City. What, in your opinion, about the underwriting of this loan was not legal, proper, prudent or customary?
A. Co-owner without being a co-borrower. Stated income. High debt-to-income ratios based on stated income.
Q. Again, what is your opinion about an appropriate debt-to-income ratio?
A. Housing expense-to-income ratio 28. Total debt-to-income ratio 36. That's what a prudent lender would do.
Q. And where do those numbers come from?
A. Experience.

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Plaintiff,	)	8:09-CV-00176-RWT
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Defendant.	)	

Volume 2

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TERRY R. MENDENHALL
Baltimore, Maryland
Friday, August 20, 2010
10:02 a.m.

Job No.: 1-184364
Pages 248 through 462
Reported by: John L. Harmonson, RPR

Deposition of

TERRY R. MENDENHALL

Held at the offices of:

BALLARD SPAHR, LLP

300 East Lombard Street

18th Floor

Baltimore, Maryland 21202

Taken pursuant to the Federal Rules of Civil Procedure, by notice, before John L. Harmonson, Registered Professional Reporter, Notary Public in and for the State of Maryland, who officiated in administering the oath to the witness.

APPEARANCES

ON BEHALF OF PLAINTIFF:

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ON BEHALF OF DEFENDANT:

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ALSO PRESENT:

ALAN J. BLOCHER
MIDDLETON THOMPSON (Via telephone)

agreement?

MR. CARITHERS: Objection.

THE WITNESS: When did they discover that the underwriting didn't comply? I don't know.

BY MR. SCOTT:

Q. Okay. Do you know when Harvest Bank discovered that the underwriting on the Stern loan did not comply with Section 3.02(p) of the agreement?

MR. CARITHERS: Objection.

THE WITNESS: No.

BY MR. SCOTT:

Q. Do you know when Harvest Bank discovered the underwriting of any of the loans at issue in this case did not comply with Section 3.02(p) of the agreement?

A. No.

MR. CARITHERS: Objection.

BY MR. SCOTT:

Q. So your answer is no?

A. The answer is no.

Q. When did Harvest Bank provide written notice to Countrywide of its contention that the

underwriting of the Karimi loan did not comply with Section 3.02(p) of the agreement?

MR. CARITHERS: Objection.

THE WITNESS: I'm not sure.

BY MR. SCOTT:

Q. Do you know when Harvest Bank provided written notice to Countrywide with respect to its allegation that the underwriting of any of the loans in the lawsuit did not comply with Section 3.02(p) of the agreement?

MR. CARITHERS: Objection.

THE WITNESS: I think it's the third amended complaint.

BY MR. SCOTT:

Q. The third amended complaint is what? Is the written notice?

A. I believe so.

Q. And when --

A. That's my interpretation. I don't know. I'm not a lawyer.

Q. All right. So other than the complaint, are you aware of any other written notice --

A. No.
Q. -- that was provided?
MR. CARITHERS: Let me make my objection. Then you can answer.
BY MR. SCOTT:
Q. I am going to start over because I want to get the entire question out.
Other than the third amended complaint, are you aware of any other written notice that was provided by Harvest Bank to Countrywide that the underwriting of any of the loans at issue in this case did not comply with Section 3.02(p) of the agreement?
MR. CARITHERS: Objection.
THE WITNESS: Not that I recall.
BY MR. SCOTT:
Q. Right now you're not aware of any such notice?
A. I don't recall any such notice. And I modify my early responses to say I don't recall. I received thousands of documents on this case.
Q. I understand that. But right now you can't identify any written notice for me other than the

third amended complaint; is that right?

MR. CARITHERS: Objection.

THE WITNESS: That's correct. Right now I cannot identify.

BY MR. SCOTT:

Q. In your most recent supplemental report, the one that's marked as Exhibit 5, you have a section starting on page 2 that talks about portfolio default results.

A. Correct.

Q. And you have some statistics in here. And you say that "As of March 31, 2009" --

MR. CARITHERS: Where are you at? On page 2?

MR. SCOTT: Correct.

MR. CARITHERS: I think right in the middle.

BY MR. SCOTT:

Q. -- "that 21 of the remaining 65 loans still owned by Harvest Bank were delinquent 30 days or more."

A. In bankruptcy, foreclosure, REO and post

MR. CARITHERS: Objection.
THE WITNESS: The focus of the AS400 notes was the collection procedures of Countrywide for those loans, primarily in the history.
BY MR. SCOTT:
Q. Well, let me ask you this: Are you familiar with the procedures that were employed by Countrywide in servicing the loans at issue in this case?
A. What servicing procedures?
Q. The servicing procedures that were used to administer the loans.
A. Did they send a payment every month, yes or no, is that the kind of procedure?
Q. Let me ask you, did you review any written procedures?
A. No, I did not.
Q. All right. Do you know whether Countrywide has any written servicing procedures?
A. No, I do not. I would guess they do.
Q. But you haven't seen them?
A. I have not seen them.

Q. All right. Do you have any opinions about whether the procedures that were used by Countrywide to service and administer the loans at issue in this case were in accordance with the customary and usual standard of practice of prudent mortgage servicers?
A. Yes.
Q. And what are those opinions?
A. That there were unreasonably long delays.
Q. In what?
A. In the collection process and the resolution process. The follow-up process.
Q. Well, we can go through the loans one at a time. Before we do that, are you familiar with the servicing procedures for residential mortgage loans for the period 2006 through 2010 that were used by Wells Fargo?
A. No.
Q. Are you familiar with the servicing procedures for residential mortgage loans for the years 2006 through 2010 that were used by Chase?
A. No.
Q. Citibank?

A. No.
Q. Washington Mutual?
A. No.
Q. Are you familiar with the servicing procedures for residential mortgage loans for the years 2006 through 2010 for any nationwide residential mortgage servicer?
A. No.
Q. Are you familiar with the servicing procedures for residential mortgage loans between the years 2006 and 2010 used by any lender?
A. Any specific lender?
Q. Any lender at all.
A. No.
Q. So I take it from that that you don't know how Countrywide's procedures for servicing residential mortgage loans during the time period 2006 to 2010 differ from those of other lenders?
A. I know how they differ from prudence.
Q. Well, do you know how they differ from those employed by other lenders?
A. No.

Q. Let's talk about the individual loans.
The Karimi loan, what, if anything, about the servicing of that loan, in your opinion, did not comply with the customary and usual standards of practice of prudent mortgage servicers?
A. It took 553 days from the date of default to the date of foreclosure, which was far in excess of the average of all of the foreclosed properties which was 317 days.
Q. What are you referring to there?
A. I'm referring to Table A in my addendum.
Q. Which report?
A. The one you just --
MR. CARITHERS: Exhibit 5, August 13th.
THE WITNESS: Exhibit 5, August 13th.
BY MR. SCOTT:
Q. Table --
A. A.
Q. All right. And the 553 days is the time period from the default date to the foreclosure date?
A. Correct.
Q. And what date are you using for the

foreclosure date?

A. 7/15/09.

Q. But what is that? Is that the ratification of the sale? Is that the auction?

A. That's the date that was given me from footnote here from Harvest Bank report, which came from Countrywide information originally, I'm told.

Q. Do you have that Harvest Bank report?

A. I have it. I can't put my hands on it right this second. But you copied it yesterday because you copied these whole files.

Q. Why don't you see if you can find it.

(Off the record.)

BY MR. SCOTT:

Q. You were able to locate it?

A. Yeah.

Q. Thank you.

All right. So according to this, it looks like the foreclosure date that you used was from the column that says "Foreclosure Auction," right?

A. Correct.

Q. Do you know what collection efforts

Countrywide made prior to filing the foreclosure with respect to the Karimi loan?

A. From AS400 notes I would. And I went through all those. Let me see if I can find some of my notes there.

I could not tell from the AS400 notes of any attempts to resolve. Payments were brought current numerous times from 8/2/06 through 1/7/08 in the customer contact history. It was referred for foreclosure on 6/27/08. On 12/16/08 it went into bankruptcy. And that was all the key information I could discern out of the AS400 notes I looked at.

Q. And let me go back to the dates on your chart. Table A, right?

A. Table A.

Q. And so the default date was January 2 of '08.

A. Right.

Q. And you're saying that the payments were not brought current after that date?

A. According to the log, payments kept being brought current until 1/7/08.

Q. All right.
A. This says the default date was 9/1/07. And the payments were brought current from various months from 8/2/06 through 1/7/08. So in between there they defaulted, according to these records.
Q. But you would agree that once the customer brings the payments current, that foreclosure is no longer appropriate, correct?
A. Correct.
Q. So foreclosure was not appropriate with respect to this loan until, at the soonest, January -- or 30 days from January 7, '08, when they were last brought current?
A. No. The default date is 30 days after the last payment was due and not received.
Q. And when was that?
A. It would have been 8/1/07, 30 days earlier than that. That's when they failed to make a payment. They're in default when you expect the next payment and it's not there.
Q. We're talking about the Karimi loan. You have a default date of January 2, '08.

A. Say that again.
Q. I thought you said that the payments were brought current on January 7, '08. Right?
A. That's what the notes indicate.
Q. So let's assume that's correct. If that's correct, then what's the soonest that a foreclosure could have been filed after that date?
A. These dates came from two different places.
Q. I understand that. I'm asking you to assume --
A. The default date was recorded by Countrywide, I'm assuming, for this information. These are notes by people on a servicing log.
Q. I understand that. I'm asking you to assume that the date of January 7, '08, was the date that the payments were brought current.
A. Okay.
Q. What was the soonest date that a foreclosure could have been filed after that?
A. Probably February 2nd of '08.
Q. Why do you say probably? You don't know?
A. It's usually 30 days later.

Q. Do you know?
A. I would have to review the loan documents to see, and then the records of what was going on at the time.
Q. You haven't done that?
A. No.
Q. So do you know what happened between -- and you said the foreclosure was filed. When was the foreclosure actually filed?
A. The foreclosure date that's recorded here is 7/15/09.
Q. That's the auction date, right?
A. Yes.
Q. So my question is: When was the foreclosure action actually commenced?
A. I can't tell you without going back to the records. But foreclosures can be threatened, ready to go almost to the courthouse steps, withdrawn for some reason, and it goes on and on and on.
Q. Right. Do you know what happened with respect to that in this case?
A. I have no idea. I know it took 553 days.

From one day to the next.

Q. And there was a bankruptcy in there somewhere too, right?

A. There were bankruptcies on many of these files.

Q. But I'm asking about this one, Karimi.

A. Yes, there was a bankruptcy.

Q. And that would have delayed the foreclosure as well, correct?

A. It always delays foreclosures. In most cases there's bankruptcies.

Q. And do you know when the bankruptcy was filed?

A. According to the log, 12/16/08 it was referred to the bankruptcy attorney. When it was filed, I can't tell you.

Q. The AS400 indicates that on 12/16/08 the file was referred to a bankruptcy attorney?

A. I believe so.

Q. And do you know how long it was before the bankruptcy attorney obtained an authorization to proceed with the foreclosure?

A. No.

Q. Do you know how long it typically takes to obtain a lift stay order or other relief from the bankruptcy court in order to proceed with a foreclosure?

A. No.

Q. You don't know whether it takes three months, six months, nine months?

A. It takes the time that it takes. And sometimes it's better than others. On some portfolios it's better than others. But I believe there's an opinion you have on how long that takes from another expert in the state of Maryland.

Q. Of bankruptcy?

A. Of foreclosure.

Q. What about bankruptcy?

A. Most foreclosures do involve bankruptcies.

Q. Well, the opinion is what it is. My question to you is: You don't know, sitting here today, how long it typically will take in order to obtain a lift stay order to proceed with foreclosure when a borrower files for bankruptcy?

A. I know it's a factor in the time period it takes to get your hands on the property.

Q. But you don't know how long it typically takes?

A. No.

Q. You're not a bankruptcy lawyer?

A. No, I'm not.

Q. And you don't know how long it took in this case?

A. No, I don't.

Q. Is there anything else about the servicing of the Karimi loan other than the fact that it took 553 days between the date of default and the foreclosure auction that you believe indicates that the servicing of this loan was not in accordance with the customary and usual standards of practice?

A. It took another 199 days to get from foreclosure to REO sale.

Q. 199 days?

A. Right.

Q. And you believe that's an excessive period of time?

A. It's slightly excessive to this group of loans because the average was 191.

Q. Are you familiar with how long it typically took to sell a residential property in Maryland in 2009?

A. Well, some it took 90 days.

Q. I'm asking you whether you know --

A. Some it took zero.

MR. CARITHERS: Let him finish the question. Slow down.

BY MR. SCOTT:

Q. I'm asking if you know generally how long it took during that period of time for a residential property to sell.

A. No.

Q. You're not a real estate broker?

A. No.

Q. You don't have knowledge of the real estate market in Maryland?

A. No.

Q. So your opinion that the 199 days is slightly excessive is based solely on the fact that

it's longer than the average of the amount of time it took for the 11 loans on Table A?

A. Correct.

Q. And is your opinion that the 553 days it took to take the loan from default to foreclosure, is that based solely on the fact that that number is greater than the average of the same time period for the 11 loans on Table A?

A. That plus my experience.

Q. Your experience in what?

A. Being responsible for a servicing operation that had to do foreclosures on property and sell REO.

Q. Have you ever been in charge of servicing residential mortgage loans in Maryland?

A. No.

Q. Do you have any experience servicing mortgage loans in Maryland?

A. No.

Q. Do you know how long a foreclosure takes in Maryland?

A. There is an expert opinion on that topic.

Q. So what is it? What is the expert opinion?

A. You've got it.
Q. Do you know what it says?
A. No, not off --
MR. CARITHERS: Take your time to find it. Don't rush.
If you want him to do that, that's fine. But don't rush, Terry. Just take your time.
(Off the record.)
MR. CARITHERS: He's looking for Jackson's report.
(Off the record.)
BY MR. SCOTT:
Q. Have you reviewed Mr. Jackson's report?
A. I did at one time. I don't know that I do have that with me. I have Nadel's expert report.
MR. CARITHERS: That's theirs.
THE WITNESS: That's yours. I noticed that as I went to it, but I don't know that I have Jackson's with me.
MR. CARITHERS: Would you like me to arrange to have it sent to your fax number? You said you reviewed it but don't have it physically here with

you. Is it at your home office?

THE WITNESS: It may be there. This was a year ago. It may be gone. But I don't have it here in the place that it should be.

BY MR. SCOTT:

Q. Well, let me ask you this: Is your understanding of how long it should take for a residential foreclosure in Maryland based entirely on Mr. Jackson's report?

A. No.

Q. What else is it based on?

A. Based on my experience and this list here, which is an internal benchmark in my view. We're internally benchmarking one loan against the other and against the average.

Q. When you say "here," you're talking about Table A?

A. Table A.

Q. All right. So other than the data on Table A and Mr. Jackson's report, what else do you base your understanding of how long a residential foreclosure in Maryland should take?

A. My experience.
Q. But you're not experienced in overseeing or handling residential foreclosures in Maryland, correct?
A. No.
Q. That is not correct?
A. I'm currently not responsible for handling foreclosures and servicing of foreclosures in Maryland, no.
Q. Have you ever done so?
A. I would have to think back. I mean, I've invested in loans all over the country, and at one time in my life I did buy loans in this area. They were serviced by someone else. But as an investor, I would have monitored their performance. That's 30 years ago.
Q. All right. Well, let's talk about the time period --
A. But you want my experience, and my experience is yes, I did invest in loans in Maryland and the D.C. area at one time in my career.
Q. 30 years ago?

A. 30 years ago at USAA. My most recent experience, we were involved in 50 states. We looked at servicing reports in 50 states, delinquencies in 50 states. It affected our income when there were foreclosure delays. We asked questions. So in that respect, I was responsible for servicing in the state of Maryland.

Q. All right. Well, you would agree, wouldn't you, that foreclosure laws are different in each state?

A. I would agree with that.

Q. And each state has a different period of time that's a typical period of time for a residential foreclosure?

A. Yes. Some states are what's called judicial foreclosure states, and they can take longer than other foreclosure states.

Q. And the length of time that it will take for foreclosure in a particular state depends on the laws in that state in part, correct?

A. Correct.

Q. Are you familiar with the laws in Maryland

regarding residential foreclosures?
A. No.
Q. Did you service or own any loans that were secured by property in Maryland during the 2000s? The period of time from 2000 to the present.
A. Yes. I was at USAA until 2003.
Q. And you had loans in Maryland?
A. We had loans in Maryland and in the D.C. area.
Q. And were you responsible for servicing those?
A. I was responsible for the servicers and their accountability to us.
Q. Were you involved in the day-to-day servicing?
A. Well, how do you define "day to day"?
Q. Who was doing the servicing on these loans?
A. Who was doing what servicing?
Q. Who was servicing them?
A. They were being serviced by various mortgage bankers around the country.
Q. Not by the institution that you worked for?

A. The institution I worked for was the master servicer. We owned the servicing. We hired subservicers to collect the payments, provide the payment cards, foreclose on the property. But we were the master servicers and we were responsible to the investor ultimately for the loans.

Q. Based on that experience, do you recall how long it typically takes for residential foreclosure in Maryland?

A. No.

Q. Based on any of your past experience, do you recall how long it typically takes for a residential foreclosure in Maryland?

A. No.

Q. Anything else about the servicing of the Karimi loan that you believe was not in accordance with the customary and usual standards of practice?

A. No.

Q. Let's go on to the Stern loan. What is it about the servicing of the Stern loan that you believe is not in accordance with customary and usual standards of practice?

A. The notes have similarities; in fact, all of them do. There was a time period from 9/19/06 to 4/23/07 where payments were delinquent and payments were brought current.

On 9/5/07, which is -- now we're going from 4/23/07 to 9/5/07, it was finally referred to foreclosure.

Then later, at 10/22/07, there was something labeled as workout short sale.

And for most of the loans, that's the only mitigation that was indicated as a strategy for dealing with borrowers that were delinquent.

Q. Was modification --

A. Short sale.

Q. Short sale.

A. And in most cases, as I followed the notes, it was "Bring me a contract," which further delayed the process. There was no preauthorized level that somebody could offer the property for sale. It's "Bring me a contract."

A contract comes in. Log notes indicate we got a contract. On another loan, it will say, "Did

anyone contact the investor?" A month or two later, "Did anybody contact the investor?"

Q. Well, let's stick with the Stern loan. And according to your Table A, the default date on that was May 1 of '07?

A. Correct.

Q. And you said there was a period after that when the payments continued to be brought current?

A. Just a minute. No. 9/19/06 through 4/23/07 was this period when payments were brought current. The default date was then recorded at 5/1/07.

Q. All right. And then the foreclosure took place on October 24 of '07, according to Table A?

A. According to Table A. The notes indicate it was referred to foreclosure on 9/5/07. So the actual foreclosure, probably auction just like the other one, was the 10/24/07.

Q. 203 days?

A. 203 days.

Q. And do you have an opinion about whether or not that's an excessive period of time?

A. Not excessive to this list of properties.
Q. Is it excessive, in your opinion?
A. That's probably not excessive.
Q. All right. So what is it about the servicing of the Stern loan that you believe was not in accordance with the customary and usual standards of practice of prudent mortgage servicers?
A. The time wasted between refer to foreclosure and this workout short sale.
Q. And how much time was that?
A. It took about three -- No, it took longer than that. Yeah, about three months.
Q. And that was from when to when?
A. That was from 10/22/07, and then there is a bankruptcy indicated on 1/25/10. So that, in my estimation, would have delayed any ability to sell the property.
Q. I don't understand your answer, because the foreclosure took place on October 24, '07, right?
A. You're correct, yes. You're right, there was no -- It looks like they just started the workout on 10/22 and then the foreclosure occurred.

Q. So there wasn't any time wasted on that?
A. I don't think so.
Q. So what was it about the servicing of the Stern loan, in your opinion, that was not in accordance with the customary and usual standards of practice?
A. I don't have anything.
Q. Nothing?
A. Not from my notes, no.
Q. Is there anything in your report about that?
A. No.
Q. The Melgar loan, M-e-l-g-a-r. What was it about the servicing of the Melgar loan that was not in accordance with the customary and usual standards of practice?
A. This was a case, and there were about three of these, that all of a sudden in the system I was looking at, I was no longer looking at the AS400 system but a loss mitigation system that had very cryptic information in it. So all I was able to see in that system, there was not an entire custom contact

history like in the AS400 system.

There was a promise to pay on 8/29/08. And this may have been because -- at least one of these loans I knew was being serviced elsewhere. So maybe that's the reason.

Maybe Countrywide was entering information they were getting from someplace else on this system. But 8/29/08 there was a promise to pay for one month. 9/20/07 it says the account is in foreclosure. And 10/20/08 there is a short sale offer.

So the dates even bounced around the place.

Q. All right. Well, my question is: What was it about the servicing of the Melgar loan that, in your opinion, did not comply with the --

A. I don't have an opinion. I don't have enough information.

Q. So you don't have any opinion about the servicing of the Melgar loan?

A. No, I don't.

Q. How about the Herr loan? Well, let's stick to Table A. The next one on Table A is the Reyes loan; is that correct?

A. Yes. There are two Reyeses, right?
Q. It's the fourth one on your Table A. It says Reyes.
A. I don't know if that's Martin or --
Q. Why don't you take a moment to look through your documents. Maybe you can determine that. I'll be right back.
(Off the record.)
MR. SCOTT: Before we go back to the Reyes loan, yesterday Mr. Mendenhall provided some data from his computer which we downloaded onto a flash drive. Some of the files are password protected. So if you could be so kind, I'm giving you a list of the files. I don't know whether they're all the same password, but right now we can't access them.
THE WITNESS: Yeah, these are things that came from you all.
MR. PARKER: It must be your password. There must have gotten something bled through from -- you remember that there were things that Countrywide sent in that were password protected? I have never heard of anybody in our group using a password.

THE WITNESS: They were attachments to e-mail. My computer doesn't have a password.
MR. CARITHERS: It does not?
THE WITNESS: No.
MR. CARITHERS: Can you access that material when you go on your flash drive?
THE WITNESS: I haven't tried. I just filed this stuff after I reviewed it.
MR. PARKER: I can ask. I can ask our client if they have any --
THE WITNESS: Are these attachments to e-mails? Is that what you're --
MR. SCOTT: I'm not sure. I was not involved. There are other people who are trying to open this stuff, and they're being blocked. So let's not spend a lot of time on it. We'll figure out a way to deal with it later.
MR. PARKER: Why don't you make a copy of that, and I can send that and find out if that triggers something.
MR. SCOTT: But in the event we need a password from Mr. Mendenhall or from your office,

you'll be willing to provide it?

MR. PARKER: Sure. Absolutely.

BY MR. SCOTT:

Q. We were talking about the Reyes loan. Were you able to determine which one this is, the first one on Table A?

A. Yes.

Q. Which one is it?

A. It's Elna.

Q. So that's the 132 Foxhall Drive in Silver Spring?

A. I don't know if that's the right address, but if that's what you have for them.

Q. Elna Reyes, E-l-n-a.

A. Yes.

Q. What was it about the servicing of that loan that in your opinion was not in accordance with the customary and usual standards of practice?

A. Let me state here, and I started to give you some general overview comments before. As I went through these AS400 notes, it wasn't what impressed me most that was in the notes, it's what wasn't in the

notes.

I mean, there is no information about the customer situation, which is what you usually see in a servicing log. It will say, "talked to customer." It doesn't say what the customer said. It doesn't usually say what the customer's problem was.

And then I read in Mr. Blocher's latest report that every one of them had a different and expansive resolution proposal. I didn't see that in those notes. So something is missing from the notes I looked at.

So the judgments I made were about time. They were about more what was not in the notes that I remarked, "Gee, this is a lot of stuff about nothing. A lot of dates. A lot of stuff that people are doing."

And the other thing I noticed is a lot of change of people that are responsible. I mean, there was a change of six different people to resolve the loan within less than a four-month period on one of the loans I remember. It's hard to keep people accountable when that's going on. And in my

estimation, that accounts for some of the time delays that are going on.

It's a call center, and over time, my experience is somebody has to be responsible for resolving the loan one way or the other and the time period in which they do it. And I didn't see indication of any of that in the system. It could be I'm not looking at what Mr. Blocher looked at, but that's my judgment.

Q. And you looked at the servicing notes?

A. I looked at the servicing notes that were given me on the AS400 system.

Q. Given to you by Liles Parker?

A. Correct.

Q. Did you look at anything else?

A. Some were not AS400 notes. Some of them, as I say, were this mitigation resolution system.

Q. Did you look at anything else?

A. No.

Q. So let's go back to the Reyes loan. What was it about the servicing of the Reyes loan specifically that you believe was not in accordance

with the customary and usual standards of practice?
A. 469 days to get from default to foreclosure and another 199 days to get from foreclosure to REO sale.
Q. All right. So the default date was 5/1/07; is that correct?
A. Correct.
Q. And the foreclosure date was August 20, '08?
A. Correct.
Q. That's 469 days. You believe that's an excessive period of time?
A. Correct.
Q. And why? What do you base your opinion on that that's excessive?
A. My experience, and then the comparison to the average here.
Q. The comparison of the average of the loans on Table A?
A. Right.
Q. Anything else?
A. My experience.

Q. Other than your experience and the average?
A. Nothing else.
Q. And do you know whether there was any bankruptcy filed after the default on the Reyes loan?
A. Yes, there was.
Q. There was? Do you know how long the borrower was in bankruptcy before the foreclosure attorney obtained authority to proceed?
A. According to the notes here, bankruptcy was filed 10/17/07. And it was foreclosed 8/20/08.
Q. Do you know how long it took the bankruptcy court to issue a lift stay order?
A. I do not.
Q. And then you also said that the amount of time it took to sell the property at REO.
A. 199 days, I believe.
Q. And you believe that's excessive?
A. It's a long time.
Q. Compared to what?
A. Compared to the average. Compared to my experience. Compared to the Rizvi loan that was actually sold at foreclosure.

Q. Well, you say it's a long time compared to the average. What's the average?
A. 191.
Q. So it's eight days longer than the average?
A. Eight days longer than the average.
Q. And you believe that makes it excessive?
A. And those other factors I mentioned.
Q. Your experience?
A. My experience.
Q. Have you ever sold a residential property in Maryland?
A. Personally, have I ever sold a property?
Q. Have you ever been involved with the sale of a residential property?
A. I'm sure I have.
Q. Do you remember the details?
A. No.
Q. Do you know how long a typical residential property was on the market in Maryland during 2008 and 2009 before it was sold?
A. No.
Q. Anything else about the Reyes loan that you

believe was not in accordance with the usual and customary standards?

A. I don't think so.

Q. The Rizvi loan, R-i-z-v-i. What was it about the servicing of that loan that you believe was not in accordance with the usual and customary standards of prudent mortgage servicers?

A. That was fully outlined in my October report, the problems that were created with the sale of foreclosure versus an offer that was made prior. Poor decision-making.

Q. Tell me what it was that was poor decision-making.

A. Page 50 of my report.

Q. You're looking at your October 30th report?

A. Correct.

Q. Exhibit 9 -- No, not Exhibit 9. Exhibit 2?

A. That sounds right.

Q. What page?

A. 50. Bottom of the page.

Q. All right. So tell me what's your understanding of what happened with respect to the

Rizvi loan.
A. A third party made a short sale offer on the Rizvi property for $486,000 prior to the foreclosure auction. Harvest Bank and Countrywide communicated that the property's value exceeded the offer and the offer should be declined.
Later at the foreclosure auction, Countrywide entered a lender's protective bid of $382,500 and sold it for $383,000, knowing that they had a previous offer for $486,000.
Q. All right. Are you aware of what Harvest Bank's position was on the short sale offer?
A. It's stated right here.
Q. They declined it?
A. They said decline it.
Q. Do you know why they did that?
A. They didn't think it was enough.
Q. And what was that based on?
A. It was based on their knowledge of the market, as I understand it. Apparently it wasn't enough by $16,000, because the winning party later resold the property shortly after foreclosure for

$470,000.

Q. But you agree that Harvest Bank instructed Countrywide to decline the short sale offer of $486,000?

A. Yes. I don't agree that they instructed them to accept a bid at foreclosure of $383,000.

Q. What should Countrywide have done?

A. They should have set a price before they ever came to foreclosure at what they were willing to sell the property for, consult with Harvest Bank about what they were willing to let the property go at at foreclosure. That's typically done, and that's standard practice.

Q. Well, do you know what Harvest Bank's minimum price was for this property?

A. I don't, no.

Q. Do you know that they communicated to Countrywide that they would only accept an amount which would make them whole on the loan?

MR. CARITHERS: Objection.

THE WITNESS: I don't know that.

BY MR. SCOTT:

Q. If that were true, would that be prudent on their part, in your opinion?

MR. CARITHERS: Objection.

THE WITNESS: I don't know.

BY MR. SCOTT:

Q. You don't know why? Because you don't know what the value of the property was at that time?

A. I don't know what Harvest Bank did, and I don't know what was on their mind. I do know what Countrywide did. I can't understand why they did it.

Q. All right. Anything else about the servicing of the Rizvi loan that you believe is not in accordance with the customary and usual standards of practice?

A. I have a note here, "Workout assignees changed 78 times between 3/27/08 and 10/6/08."

Q. And you believe that that's not in accordance with the customary and usual standards of practice?

A. I do believe that. And I don't believe it's prudent.

Q. Why not?

A. Nobody is accountable.
Q. But again, you're not familiar with what the standards that are employed by -- Well, skip that.
Anything else about the servicing of the Rizvi loan?
A. No.
Q. So it's the short sale and the bidding of the foreclosure and the fact that there was high turnover among the people who were working on the file?
A. Correct.
Q. And is there nothing else?
A. Not based on what I looked at.
Q. The Stern loan. What was it about the servicing of the Stern loan, in your opinion, that was not in accordance with the customary and usual standards of practice of prudent mortgage servicers?
A. From the limited information I looked at, I don't see anything. It's again what was not there.
Q. All right. So you can't point to any specific --
A. I can't point to any specifics based on

what I looked at.
Q. So you don't have an opinion about the servicing of the Stern loan?
A. No, I don't.
MR. CARITHERS: Hold on. Let me put an objection.
BY MR. SCOTT:
Q. Your answer was no?
A. After his objection, my answer was no.
Q. The next loan is the Yi loan, Y-i. Do you have an opinion about whether the servicing of that loan was in accordance with the customary and usual standards of practice of prudent mortgage servicers?
A. Time, both from default date to foreclosure date and number of days from foreclosure to sale.
Q. Anything else?
A. No.
Q. The time issue, the default date was September 1 of '07.
A. Correct.
Q. Foreclosure date was August 6 of '08?
A. Correct.

Q. For a time of 335 days, correct?
A. Yes.
Q. And you believe that's excessive?
A. And this one, I have no indication this one went into bankruptcy.
Q. You believe that 335 is excessive?
A. I do.
Q. And that's based on what?
A. My experience.
Q. Anything else?
A. Compared to the other loans on this list.
Q. The average was what, three --
A. 317.
Q. So you believe 335 is excessive if the average is 317?
A. Well, especially if the 317 included loans with bankruptcy, and I don't know that this one was in bankruptcy.
Q. You don't know whether it was?
A. I don't know whether it was. I don't have it in the notes that it went into bankruptcy.
Q. All right. And the time for the REO sale

was 254 days?
A. Correct.
Q. All right. And that's 254 days from when to when?
A. From the foreclosure date to the REO sale date.
Q. All right. And do you know how long it typically takes between the foreclosure date and the date that the court ratifies the foreclosure sale in Maryland?
A. No, I don't.
Q. Do you know that a deed to the property is not issued until after the sale is ratified by the court?
A. No. But didn't all these loans have to go through this?
Q. I'm not the one being deposed here today, sir.
A. That's my judgment, is that they all went through the same process.
Q. Right. But do you know how long it takes for a sale to be ratified by a court in Maryland

typically?
A. No, I don't.
Q. And do you know whether a property can be sold before the court ratifies the foreclosure sale?
A. I do not.
Q. And so your judgment that the 254 days for the REO sale is excessive is based on what?
A. My experience.
Q. And the average?
A. And the average.
Q. And the average was what, 191?
A. 191.
Q. So you believe 254 is excessive based on that average?
A. I do.
Q. Anything else about the Yi loan?
A. No.
Q. Karimi we already talked about.
Okonkwo. What was it about the servicing of the Okonkwo loan that in your opinion was not in accordance with the customary and usual standards of practice of prudent mortgage servicers?

A. This is another one that I have no record of bankruptcy on the history I looked at. The information was very sketchy. I believe this one came off that loss mitigation system also.

Foreclosure letter was written on 5/16/08. Foreclosure occurred 7/16/08. Or was referred on 7/16/08, and then foreclosure posting I believe was 7/25/10. What does this say the foreclosure date was?

Q. January 20, '09.

A. Yeah. So that was the auction.

Q. So 289 days from default to auction?

A. Right.

Q. You believe that's excessive?

A. As with the earlier file, since there was no indication of bankruptcy, it looks excessive.

Q. All right. It's less than the average, right?

A. It's less than the average, but the average has in it bankrupt loans, as we talked about.

Q. Right.

And again, you don't know how long typically it takes to get an order from the bankruptcy

court allowing the foreclosure to proceed, do you?
A. I don't.
Q. Anything else about the servicing of the Okonkwo loan?
A. 277 days to sale of REO is far in excess of the average, far in excess of the last loan we looked at.
Q. Do you know why?
A. I don't have any idea.
Q. All right. Have you looked at the REO file?
A. No, I have not.
Q. Have you looked at any of the REO files?
A. No.
Q. You would agree, wouldn't you, that an opinion about how long it should take to sell a residential property depends on the specific facts related to the sale of that property?
A. And the property itself and the person responsible for managing it.
Q. What neighborhood it's in, what condition it's in, where it's located, all of those things,

right?

A. And how aggressive the person is who is managing the sale of the REO.

Q. How good the broker is, how good the broker's connections, all those facts would be relevant, right?

A. Yeah.

Q. And you don't know any of those factors --

A. How qualified the Countrywide person is in picking the right broker.

Q. And you don't know who the broker was on this case?

A. I do not.

Q. And you don't know who the broker was on any of these REO sales?

A. No, I don't.

Q. And you don't know what the property condition was on any of these properties?

A. I do not.

Q. And you don't know what the asking price was?

A. No.

Q. Do you know how Countrywide selected brokers to sell REO properties?
A. I have no idea.
Q. Anything else about the Okonkwo loan?
A. No.
Q. Rodrigues. What was it about the servicing of the Rodrigues loan that, in your opinion, was not in accordance with the customary and usual standards of practice?
A. 355 days from default to foreclosure exceeds the average. This was a short sale. This is the one I mentioned earlier. Foreclosure letter was issued on 8/22/08. Referred to foreclosure on 2/23/09. 2/5/09 there was a short sale offer. By 4/8/09 there is a note in the file, "This has got to go to an investor."
So an offer comes in on 2/5, I believe. That's what the notes indicate. They waited that long to know that they needed to go to an investor. During that time --
Q. How long?
A. From 2/5 to 4/8, it appeared by the notes.

Q. So about 60 days?
A. Right. Then two times, by 5/31, they had changed the person responsible for working this thing out. 5/27/08 there is a note, "Still has not gone to the investor to get authorization." That's two months after the first note.
Q. I thought the first note was in --
A. 4/8.
Q. Of '09, is what you said.
A. I wrote that down wrong. It's '09.
Q. So there is another note in the file on May 27, '09?
A. Yes. That is the note. It's '09, because these followed consecutively.
Q. So what was the 5/27/09 note?
A. "Still no investment authorization?"
Q. Do you know if the notice had been sent and not responded to?
A. No, I don't.
Q. What else about the --
A. No, it didn't indicate that they had sent a notice to the investor. The question was being asked,

"Has anybody asked the investor yet?" And that was asked twice.

Q. I thought that's what you said was asked on April 8th.

A. That's what was asked. And it was asked again on 5/27/08, as I read the notes.

Q. What did the notes say on 5/27/09?

A. It says, "Still no investor authorization?"

Q. So my question to you was: Do you know whether prior to that note authorization was sought from Harvest Bank and that Countrywide was still waiting for a response, or whether they hadn't sought authorization?

A. The indication was they hadn't yet sought authorization still.

Q. And that's based --

A. Because they were asking, "Have you sought authorization?"

Q. I thought you said they were asking whether there was authorization.

A. No, they were asking whether they had sought it yet.

Q. What exactly did it say?
A. I don't know what exactly it said.
Q. Okay.
A. Not from my notes.
Q. Is there anything about the servicing of the Rodrigues loan that you believe is not in accordance with customary and usual standards?
A. Unusual to this list is that it was eventually a short sale.
Q. On July 27th?
A. Correct.
Q. And did Harvest Bank approve the short sale?
A. They must have. Because it closed.
Q. So your only complaint about this particular file is this delay between the short sale coming in on February 5 of '09 and the time it took to get Harvest Bank's approval for the short sale?
A. Standard procedure in people that really want to accept short sale offers is you authorize an amount in advance, and you tell the real estate agent, "We'll sell it for this amount."

To say "Bring us an offer" is going to cause this kind of delay. So that's not standard and customary, and it's not prudent.

Q. All right. Other than the delay associated with seeking approval for the short sale, is there any other thing about the servicing of the Rodrigues loan that you believe was not in accordance with the customary and usual standards?

A. Not from what I saw.

Q. Chharbra. What was it about the servicing of the Chharbra loan that you believe was not in accordance with the customary and usual standards of practice of prudent mortgage servicers?

A. Chharbra. 493 days is excessive.

Q. 493 days is what?

A. Default to foreclosure.

Q. So the default was April 1st, '08?

A. Correct.

Q. And foreclosure was August 14 --

A. 8/14/09.

Q. We have to try to not speak at the same time.

Do you know whether there was a bankruptcy?
A. Let me look here. There ultimately was a bankruptcy on 1/25/10.
Q. After the foreclosure sale?
A. After it was posted, reposted, referred back to foreclosure. There finally was a bankruptcy indicator on 1/25/10.
Q. But the foreclosure sale took place before that?
A. According to this.
Q. Do you know when the sale was ratified by the court?
A. No.
Q. Do you know if the bankruptcy delayed ratification of the foreclosure sale after August 14, '09?
A. I do not.
Q. Do you know what efforts were being made by Countrywide after April 1st, 2008, until the foreclosure sale to try to resolve the deficiency?
A. Collecting past due payments for a number of months, as with many of the previous loans. Here

we do have some indication of feedback from the borrower asking for an extension of payment due date for a week on 3/28/08. Payment brought current on 3/31/08. Referred to foreclosure on 6/28/08. Borrower requested assistance on 2/19/09.

Short sale request, and again change in people here to something called the Homesaver Program. Short sale request on 3/4/09. Foreclosure reinstated on 4/2/09. 4/14/09, short sale still active. 6/18/09, insufficient offer. 8/14/09, return to foreclosure.

On 8/13/09 they referred a foreclosure amount for a bid to Harvest Bank. And on 1/25/10 it went into bankruptcy.

Q. Do you know what the Homesaver Program is?

A. I read about it in some of the Countrywide literature. I read about many programs they were using.

Q. Do you have an understanding of what the Homesaver Program is?

A. Not as I sit here, no.

Q. So other than the 493-day period from

default to the foreclosure auction, is there anything else about the servicing of the Chhabra loan that you believe is not in accordance with the customary and usual standards of practice?

A. Only that the Homesaver Program didn't work.

Q. But you don't know what the Homesaver Program is?

A. They list many programs. Obviously none of them worked. They didn't save the home for the borrower.

Q. Does that mean that they shouldn't have pursued it?

A. If you're going to help somebody, you ought to help them. If not, you shouldn't.

Q. And it shouldn't take any time?

A. If it's leading to resolution, yes.

Q. So in hindsight, you can say that it didn't work. But at the time, before there was a resolution, do you believe that pursuing something like the Homesaver Program is not appropriate?

A. I believe you look for every opportunity to

work out the loan if it's feasible. But you have to know what is feasible and what's not pretty early and not pass it to somebody else and somebody else and somebody else.

Q. Do you know whether Countrywide knew whether it was feasible early on?

A. No, I don't.

Q. Is there anything else about the servicing of the Chharbra loan that you believe is not in accordance with the customary and usual standards?

A. No.

Q. The Gooding loan is the last one on Table A.

A. Yes.

Q. What is it about the servicing of that loan that you believe was not in accordance with the usual and customary standards of prudent mortgage servicers?

A. It was not reported to Harvest Bank. It appeared only after it had been foreclosed by US Bank, who was servicing the loan, never tracked on any delinquency report, servicing report or anything else, is my understanding.

It appeared to them after everything was already done, all decisions were made, and it had been serviced by US Bank.

Q. Okay. Other than that, anything else?

A. No.

Q. So it's the fact that Countrywide didn't provide information to --

A. 404 days --

Q. You have to let me finish my question.

A. Okay.

Q. Is there anything else about the servicing of the Gooding loan that you believe was not in accordance with the customary and usual standards of practice?

A. The number of days it took from default to foreclosure.

Q. Which was 404?

A. Yes.

Q. The default was on October 1, '08; is that right?

A. Right.

Q. And you have an estimated foreclosure date?

A. We found out since that it's four days from this date.

Q. What is it?

THE WITNESS: David, you may recall. You and I talked about that.

I estimated it to finish this report. But he since discovered it and told me about it, and it was within four days of this.

BY MR. SCOTT:

Q. Of November 15, '09?

A. Correct.

Q. You don't know the exact date?

A. I think it was the 19th.

Q. And do you know whether there was any bankruptcy filed?

A. I do not.

Q. Do you know what efforts Countrywide made in between the default date and the foreclosure date? Strike that.

Do you know what efforts were made by Countrywide or US Bank between the default date and the foreclosure date in order to resolve the

deficiency?
A. We know nothing.
Q. Now, those are the 11 loans that you looked at the AS400s for; is that right?
A. That's correct.
Q. All the ones on Table A?
A. The AS400s and the mitigation system as a substitute in three or four of the loans.
Q. And that's all the loans on Table A?
A. That's correct.
Q. Of Exhibit 5?
A. That's correct.
Q. There are other loans which are at issue in the case which have not been foreclosed. And you have not reviewed the AS400 notes for those loans; is that correct?
A. That's correct.
Q. Do you have any opinion about the servicing of those loans?
A. Yeah. The servicing time in the days to default just counted through 8/1/10 is extremely excessive.

Q. What are you looking at?
A. Table B.
Q. We're still on Exhibit 5?
A. That's correct.
Q. This is your August 13th report?
A. That's right.
MR. CARITHERS: Terry, let him finish his questions, please.
THE WITNESS: Okay.
MR. SCOTT: Why don't we take a couple-minute break.
(A recess was then taken.)
BY MR. SCOTT:
Q. We were talking about Table B before we took the break.
A. Correct.
Q. Tell me what Table B is.
A. Table B is the remaining defaulted loans that have not been foreclosed.
Q. And do you have any opinion about the servicing of these loans?
A. I have not reviewed any servicing notes on

these loans.
Q. All right.
A. Yes, I do.
Q. Well, let's take them one at a time. The first one on the chart is the Herrera loan, right?
A. Yes.
Q. Do you have an opinion about the servicing of that loan?
A. No. I have read no servicing notes about specific loans. I told you that.
Q. So you don't have an opinion about the servicing of that loan?
A. Not at this point, no.
Q. Do you have an opinion about the servicing of the Song loan?
A. No, not at this point.
Q. The Brickley loan?
A. No, not at this point.
Q. Kang?
A. No.
Q. Malate?
A. No.

Q. Watson?
A. No.
Q. Lee?
A. No.
Q. Cala?
A. No.
Q. Carberg?
A. No.
Q. Espinal?
A. No.
Q. Medina Sic-Rodrigues?
A. No.
Q. Or is that two different loans?
Yeah, Medina. You do not have an opinion about Medina?
A. No.
MR. CARITHERS: On servicing?
MR. SCOTT: On servicing.
BY MR. SCOTT:
Q. Do you have a servicing opinion about Sic-Rodrigues?
A. No.

Q. Do you have a servicing opinion about Ahmed?
A. No.
Q. A servicing opinion about Reyes? This is the other Reyes loan.
A. No.
Q. Let me just for the record make sure we're clear about which one that is.
A. It should be Martin.
Q. Yeah, Martin. You do not have an opinion about the servicing of that loan?
A. No.
Q. Do you have an opinion about the servicing of the Perera loan?
A. No.
Q. An opinion about the servicing of the Hweyhua loan?
A. No.
Q. Do you have an opinion about the servicing of the Douglas loan?
A. No.
Q. Do you have an opinion about the servicing

of the Hussein loan?
A. No.
Q. Do you have an opinion about the servicing of the Guzman loan?
A. No.
Q. Do you have an opinion about the servicing of the Hirunyakes loan?
A. No.
Q. Do you have an opinion about the servicing of the Villatoro loan?
A. No.
Q. Do you have an opinion about the servicing of the Flores loan?
A. No.
Q. Do you have an opinion about the servicing of the Main loan?
A. No.
Q. Do you have an opinion of the servicing of the Diakite loan?
A. No.
You missed one.
Q. I did? Oh, the Dam loan. You're right.

Do you have an opinion about the servicing of the Dam loan?

A. No. I have an opinion about all the loans, and it's in this report.

Q. An opinion about the servicing of all the loans?

A. Correct.

Q. And what is that?

A. It has taken 523 days, on average, and we're not to foreclosure on all of these loans. It took a total of 508 days to get through the sale of REO, through foreclosure to sale of REO on the previous foreclosed properties. That's extremely excessive.

Q. Compared to what?

A. Compared to previous experience.

Q. Your previous experience?

A. The previous experience of Table A foreclosed properties by the same servicer.

Q. So you're saying that because the length of time between default and foreclosure on the loans on Table B exceeds the average on Table A that it's

excessive?
A. No, that's not what I said. I said the total time from default to sale of REO took less time than default to today on these loans on Table B.
Q. But you don't know what is happening with the servicing of the loans on Table B, correct?
A. I know that it's taking too long.
Q. Do you know if any of these borrowers have brought their loans current since the default?
A. Not as of 8/1/10, they have not.
Q. And how do you know that?
A. Because they're still in default.
Q. According to who?
A. According to the records that I used that came from Harvest Bank, that they got from Countrywide as of this cutoff date of 8/1/10.
Q. Where did the information on this chart come from, Table B?
A. I just told you.
Q. You got it from Harvest Bank who got it from Countrywide?
A. Correct.

Q. Did Harvest Bank give you a document that they got from Countrywide that supplied this data?
A. Did they gave me a document that came from Countrywide?
Q. Right.
A. No.
Q. They gave the information to you verbally? How did they give it to you? How did Harvest Bank give you the information that's in Table B?
A. They gave it to me in the form of a spreadsheet.
Q. And that's a spreadsheet that they got where?
A. They prepared from data that was given to them by Countrywide.
Q. Do you have that spreadsheet here?
A. I do. You've copied it.
Q. I did? What, yesterday?
A. Yes.
Q. Was it marked as an exhibit?
A. No.
MR. CARITHERS: It's in the binders.

MR. SCOTT: Oh, okay.
BY MR. SCOTT:
Q. Can you find it in your binders?
A. It's the one titled "37 Borrowers." We may have to dig for it at lunch.
Q. We'll get back to that.
A. Okay.
Q. So other than the length of time between the default date and today as reflected on Table B, is there anything else about the servicing of the loans on Table B that you contend was not in accordance with the usual and customary standards?
A. No.
Q. And you don't know whether there have been any bankruptcies filed with respect to any of the loans on Table B?
A. No.
Q. And you don't know whether Countrywide has been negotiating loan modifications with any of the borrowers listed on Table B?
A. No.
Q. Do you know if there have been any changes

in Maryland law that increase the amount of time that it takes to conduct a foreclosure in Maryland?

A. No.

Q. Do you know whether any of the borrowers on Table B have made any partial payments?

A. No.

Q. Do you know what Countrywide has done or has not done with respect to the servicing of any of the loans on Table B?

A. No.

MR. SCOTT: All right. Let's take a lunch break now and come back at 12:30.

(A recess was then taken.)

BY MR. SCOTT:

Q. I want to go back and talk a little bit more about underwriting. Yesterday you told me about your opinions about the aspects of the underwriting of the loans that you believe was not legal, proper, prudent or customary.

Do you remember that testimony?

A. Yes.

Q. You told me with respect to each loan what

Q. As part of Exhibit 5?
A. Correct.
Q. So with respect to the Mangieri loan, in what amount was the value impacted by the alleged breach of Section 3.02(p)?
A. The value of all the loans ranges somewhere between 46.01 and 51.28 percent of par.
Q. That's the total portfolio, right?
A. That's correct.
Q. Or is that just the defaulted loans?
A. That is the defaulted remaining portfolio of loans.
Q. Which is 25, right?
A. That's correct.
Q. And that's what you believe to be the value of all of those loans combined?
A. Right.
Q. My question to you is: In what amount did the breach of the underwriting warranty in Section 3.02 affect the value of the Mangieri loan?
A. Between 46.01 percent of par, is the current value, to 51.28 percent of par.

Q. That's for the total portfolio?
A. That's correct.
Q. I'm only asking about the Mangieri loan.
A. They're all treated equally.
Q. Well, what's the dollar amount that the Mangieri loan was impacted by the breach of the warranty of Section 3.02(p)?
A. Between 53.99 percent of the principal balance and 48.72 percent of the principal balance.
Q. So you don't have a dollar figure?
A. We can calculate it if you would like.
Q. So you're saying it's a percentage?
A. It's a percentage of the principal balance.
Q. It's a range? It's between 43.9 and 53.99 percent?
A. Correct.
Q. So you can't put a specific dollar figure on it?
MR. CARITHERS: Objection.
THE WITNESS: One can.
BY MR. SCOTT:
Q. Okay. Tell me what that is.

A. There is a midpoint between those two numbers.

Q. Right. And what is it?

A. Do you want me to calculate it?

Q. Yeah, please.

A. All right. Does anybody have a calculator that's handy?

(Off the record.)

THE WITNESS: 51.36 percent of the principal balance.

BY MR. SCOTT:

Q. And what does that figure represent?

A. That's the loss associated with these loans, the fair market value of this loan.

Q. What factors impact the fair market value of a mortgage loan?

A. What factors influence fair market value of a mortgage loan?

Q. Right.

A. Economic conditions. The default record on the loan or loans. Interest rates.

Q. How about the value of the collateral?

A. The value of the collateral.

Q. That would affect the fair market value of the loan?

A. Yes.

Q. So with respect to the Mangieri loan, when you say par value with respect to the Mangieri loan, what are you referring to?

A. All of these loan note amounts totaled $8,462,709.10. That's par.

Q. The note amount is par?

A. The note amount is par of a mortgage.

Q. Did you calculate the fair market value of the 25 defaulted loans that haven't been foreclosed?

A. That is what I did. That's what the whole exercise is.

MR. CARITHERS: Hold on a second. I think that's what he just gave you, the earlier answer was on Table B. I'm not sure if that's what you were asking him.

BY MR. SCOTT:

Q. So the value that you came up with in Table C is what you believe is the fair market value of the

entire 25 defaulted loans that have not been foreclosed?

A. Correct.

Q. And when you calculated that, how did you do it?

A. I started with some basic assumptions.

Q. Okay. What were they?

A. The first is as of 8/1/10, that date. The next assumption is that the performance of all the current defaulted loans will equal all the liquidated loans to date.

Q. All right.

A. That it would have a five-year life of the investment by whomever is buying all these loans, and all the properties will be disposed of by the end of five years through an even amortization of that amount.

Q. Anything else?

A. That the return on investment that the investor would demand would range somewhere between 20 and 35 percent.

Q. What do you mean by "the return on

investment"?
A. This is an investment that somebody would make to purchase these loans. That's how I arrived at the fair market value. And I outline in the report that's how I approached it.
Q. It's a hypothetical investor?
A. Correct.
Q. And why do you assume that the investor is going to want a return of 20 to 35 percent?
A. Experience.
Q. Why do you assume that the performance of the loans will remain equal to the performance of the loans that were already foreclosed?
A. Because we've already on these loans, without a foreclosure, exceeded the amount of time that the other loans took to get all the way through foreclosure and sale of REO.
Q. All right. Is the value of the collateral that secures these loans subject to fluctuation over time?
A. Of course.
Q. And have you made any accounting for that?

A. That it will not change from what it is today.

Q. And why do you assume that the value of the collateral will not change?

A. Because it hasn't.

Q. Well, do you know what the value -- You told me yesterday you don't know what the value of these properties are; is that correct?

A. I told you I made assumptions that that will not change from what the experience was in Table A for the foreclosed loans.

Q. Right. You told me that you made that assumption when you did the analysis in Table C?

A. Right.

Q. My question is: Why did you make that assumption?

A. Because those are the assumptions an investor would make.

Q. So an investor wouldn't account for fluctuation in the value of the collateral?

A. No. They would assume nothing will get better than it is today.

Q. And why do you say that? What do you base that statement on?
A. Experience.
Q. Experience in what?
A. Experience in investments. Experience with people who buy foreclosed real estate. Experience with people buying distressed types of properties or collateral.
Q. Do you have any experience with investors buying defaulted mortgage loans?
A. Yes.
Q. What's your experience in that area?
A. I was at San Antonio Savings when the assets of that institution, many of which were defaulted, were valued and purchased by another institution.
Q. And when was that?
A. 1983 through 1990.
Q. And were you involved in the valuing of those assets?
A. I didn't work for the investor.
Q. Is that a no?

A. No. I provided opinions on value.
Q. To who?
A. To the management of that institution. To the RTC.
Q. And how did you prepare those opinions?
A. From experience.
Q. Is there an established methodology for valuing mortgage loans?
A. Not mortgage loans that are in default.
Q. So there is no established methodology for doing that?
A. Not that I'm aware of.
Q. And when you did these value opinions in the 1980s, what methodology did you use?
A. I can't recall.
Q. The analysis that you did in Exhibit C assumes that the value of the collateral of the loans will not change over time, correct?
A. Correct.
Q. Anything else that you assume?
A. No changes in the weighted average coupon of the loans that are or may eventually perform.

Q. Are there any other assumptions?
A. That there's a present value of annuity discount of 6 percent that's used.
Q. Why did you use that percentage?
A. Well, because some of the income and expense items take place over a five-year period; some are a one-time item. And investment methodology is you have to put those all at the same point in time, and you do that through present value tables.
Q. And based on all these assumptions, it's your opinion that the fair market value of the 25 defaulted loans that haven't been foreclosed is a percentage of par value of between 48.72 and 53.99?
A. No. Percentage of the principal balance, which is a price to par. The percent of the principal balance is between 48.72 and 53.99 percent of the principal balance. So the price to par is subtracting that number from 100. Par is 100.
Q. The value, in your opinion, is between 48.72 percent and 53.99 percent of par?
A. No. The value is between 46.01 and 51.28 percent of par.

Q. Where is that on the chart?
A. It's on page 6.
Q. Oh, okay. Why is there a range?
A. I'm not the investor. I'm assuming that the investor is going to want a return that ranges between 20.5 and 34.33 percent return on investment.
Q. And you're assuming that based on what?
A. Experience.
Q. Experience with what?
A. Investments.
Q. In defaulted mortgage loans?
A. And in general.
Q. Well, do you have experience with investments in defaulted mortgage loans?
A. I do.
Q. That's what you told me about earlier when you were at San Antonio in the 1980s?
A. Correct.
Q. So based on that experience, you believe that that's the range that an investor is going to need to make this acquisition?
A. And my own personal investment experience.

Q. Have you ever personally invested in defaulted mortgage loans?

A. No.

Q. The impact on the value of each loan, then, would be that range of percentage applied to the original note amount?

A. Correct. No, applied to the principal balance. The percent of the principal balance.

Q. All right. Well, let's go through a couple of specific loans and have you tell me what you believe the value is based on this analysis so that I can understand it.

I believe that the defaulted loans that have not been foreclosed are listed on Table B, correct?

A. Correct.

Q. So the Herrera loan.

A. Okay.

Q. What is your opinion about the value of that loan?

A. The current principal balance is $247,589.79. If I used this calculator correctly, the

range of the value on that loan would be somewhere between $113,916.06 and $126,964.09, with a principal balance of $247,589.79 today.

Q. So what's the loss?

A. Okay. The loss is between $133,673.73 and $120,625.75.

Q. And what portion of that loss is attributed to the change in the value of the collateral?

A. I don't understand the question.

Q. Well, you told me what the total loss is for the value of that mortgage loan, correct?

A. That's correct.

Q. And my question is: What portion of that loss is attributable to a reduction in the value of the collateral?

A. I still don't think I understand the question or can answer it.

Q. You told me before, I asked you what factors impact the value of a mortgage loan. Do you remember that?

A. Yes.

Q. And you gave me a list of things, and one

of them was the value of the collateral. So my question is what portion -- And you also gave me some other factors, like interest rate, default record, et cetera.

So my question is: With respect to the Herrera loan, you have now quantified what you believe the loss is on that loan in terms of reduction in value of the loan, and I'm asking what portion of that loss do you attribute to a change in the collateral value?

A. I don't know.

Q. You don't know?

A. I don't know. I don't think any investor would know that. They would only know what happened to the previous loans that had been foreclosed.

Q. Well, wouldn't an investor want to get an appraisal of the collateral?

A. Eventually, yes. All these properties are occupied, as I understand it. You can't get an appraisal and adequately appraise the property unless they're vacant and in your hands.

Q. So your testimony is that you cannot get an

accurate appraisal unless you have possession of the property?

A. Normally, yes.

Q. So you're saying that an investor would have to buy these loans without knowing what the value of the collateral is?

A. I think they might have some idea, but I don't think that's the major thrust of their offer.

Q. Well, do you think it would be prudent for an investor considering purchasing the Herrera loan to get an appraisal of the collateral before it decided to buy it?

MR. CARITHERS: Objection.

You can answer.

THE WITNESS: I don't know.

BY MR. SCOTT:

Q. So just going back to my question, then, you don't know what portion of the loss in value of the Herrera loan is attributable to a change in value of the collateral?

A. Nor do I know how much of the change in the value is due to what Herrera has done living in the

property. Nor do I know what happened to the house next door to Herrera on the street to Herrera. Nor would the investor.

Q. Do you know what portion of the reduction in value of the Herrera loan was caused by Countrywide's alleged breach of the underwriting warranty in Section 3.02 of the agreement?

A. All of it.

Q. And why do you say all of it?

A. It's the only thing that's different than standard practices.

Q. What do you mean, "the only thing that's different than standard practices"?

A. These are not standard loans. I've said that before. These were not prudent loans.

Q. But you admit that the change in the value of the collateral over time affects the value of the mortgage loan, correct?

A. Right.

Q. And you haven't accounted for that in your analysis, correct?

MR. CARITHERS: Objection.

THE WITNESS: It's a chicken and egg.
BY MR. SCOTT:
Q. Well, you have not accounted for a change in the value of the collateral in your analysis, correct?
A. I've assumed that the collateral value will not change from what it is today.
Q. And you don't know what the value of the collateral is today?
A. No.
Q. Do you know what effect the change in the value of the collateral in any of the properties on Table B has had on the value of these mortgage loans?
A. No. Nor do I know what the performance of these mortgage loans and ones like them have done to the collateral value of this loan and the surrounding neighborhood.
Q. I want to talk about some of the documents that were in your binder that we had copied yesterday.
MR. SCOTT: Counsel, I have a set for you.
MR. CARITHERS: Okay. The whole set will be an exhibit?

A. Correct.
Q. Do you have any statistics on default rates for reduced documentation loans nationally?
A. No.
Q. Do you have any statistics on default rates for reduced documentation loans in Maryland?
A. No. Might I clarify? The MBA, which is my source, and they're the largest source of delinquency information, tracks what is outlined -- Let me see if I can find that.
They track fixed rate prime, ARM prime, fixed rate subprime, and ARM subprime.
Q. There is an allegation in the complaint in this matter about the finance of the sale of one of the REO properties by Countrywide Bank. Are you familiar with that allegation?
A. Vaguely.
Q. Do you have any opinions about that?
MR. CARITHERS: Objection.
THE WITNESS: No.
BY MR. SCOTT:
Q. Have you ever been qualified by a court to

testify as an expert?
A. No.
Q. There's some discussion in your report on page 8. I'm referring to your August 13th report, Exhibit 5.
A. Okay.
Q. About exceptions to underwriting standards.
A. Correct.
Q. Do you know which of the loans that are at issue in this case involved exceptions to underwriting standards?
A. No. And I say here: "It is not clear in the underwriting files which loans were subject to exceptions or the basis for any exceptions made."
Q. So you don't know whether there were any exceptions made on any of the loans?
A. I do not.
Q. On page 9 of your report, Exhibit 5, there is a discussion of the risk layering matrix.
A. Yes.
Q. And you say that you compared three loans against that matrix, right?